

STATE OF MICHIGAN
COURT OF APPEALS

DONNA A. TURSCAN, Personal Representative
of the Estate of CLARA HART, Deceased,

UNPUBLISHED
January 11, 2007

Plaintiff-Appellant,

v

No. 261980
Wayne Circuit Court
LC No. 03-325934-NH

HEALTH CARE & RETIREMENT
CORPORATION OF AMERICA, a/k/a HCR
MANOR CARE, d/b/a HEARTLAND HEALTH
CARE CENTER – DEARBORN HEIGHTS, HCR
PHYSICIAN SERVICES, d/b/a HCR
PHYSICIAN MANAGEMENT SERVICES, INC.,
and ISHA PATHAK, M.D., d/b/a MIDWEST
PHYSICIAN SERVICES,

Defendants-Appellees,

and

MICHAEL SANDBORN, M.D. and R. STEVEN
GEIRINGER,

Defendants.

Before: Fort Hood, P.J., and White and O’Connell, JJ.

O’CONNELL, J. (*concurring in part and dissenting in part*).

I concur with the majority opinion that various conflict panels have attempted to resolve most, if not all, of the issues presented in this case. My position concerning these conflict panels is set forth in my concurring opinion in *Ward v Siano*, ___ Mich App ___; ___ NW2d ___ (Docket No. 265599, issued November 14, 2006).

However, for the reasons stated by Judge Murray in *Verbrugghe v Select Spec Hosp*, 270 Mich App 383, 389; 715 NW2d 72 (2006), I conclude that *McLean v McElhaney*, 269 Mich App

196; 711 NW2d 775 (2005), “provides us no useful guidance.” As Judge Murray did, I would apply *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29; 658 NW2d 139 (2003), to the facts of this case.¹

I would reverse the decision of the trial court.

/s/ Peter D. O’Connell

¹ I note that *Bryant v Oakpointe Villa*, 471 Mich 411, 432; 684 NW2d 864 (2004), may in fact control the outcome of all of these cases (equitable tolling applies to MCL 600.5852 where the court determines “understandable confusion” exists).